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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 STATE OF WASHINGTON,

12 Plaintiff,

13 vs.

14 FRANCISCAN HEALTH SYSTEM d/b/a
15 CHI FRANCISCAN HEALTH;
16 FRANCISCAN MEDICAL GROUP; THE
17 DOCTORS CLINIC, a Professional
18 Corporation; and WESTSOUND
19 ORTHOPAEDICS, P.S.,

20 Defendants.

21 NO. 3:17-cv-05690

22 **DECLARATION OF MICHAEL J.
23 FITZGERALD IN SUPPORT OF RESPONSE
24 TO STATE'S MOTION TO SEAL
25 OPPOSITION AND DECLARATION [DKT.
26 NO. 43] AND MOTION TO SEAL MOTION
27 FOR PARTIAL SUMMARY JUDGMENT
28 AND DECLARATION [DKT. NO. 47]**

20 I, Michael J. Fitzgerald, do certify and declare as follows:

21 1. I am over the age of 18, am competent to testify, and have personal knowledge of
22 the matters stated herein.

23 2. I am the Chief Financial Officer for Defendant Franciscan Health System.
24 Franciscan Health System is the sole member of Defendant Franciscan Medical Group (together,
25 “Franciscan”).

26 3. On November 29, 2017, the State filed the following documents under seal: (a)
27 Opposition to Certain Defendants’ Motion to Dismiss *Per Se* Claim (Dkt. No. 45) (“Opposition”),

28 DECLARATION OF MICHAEL J. FITZGERALD IN
29 SUPPORT OF RESPONSE TO STATE'S MOTIONS TO
30 SEAL (NO. 3:17-cv-05690-BHS)

1 (b) Declaration of Stephen T. Fairchild in Support of Opposition to Certain Defendants' Motion to
2 Dismiss *Per Se* Claim, with attached exhibits (Dkt. No. 46), (c) Motion for Partial Summary
3 Judgment on Count One (Dkt. No. 49) ("Motion"), and (d) Declaration of Stephen T. Fairchild in
4 Support of State's Motion for Partial Summary Judgment on Count One, with attached exhibits
5 (Dkt. No. 50). The State simultaneously filed its redacted Opposition (Dkt. No. 44, later revised at
6 Dkt. No. 53-1), and redacted Motion (Dkt. No. 48, later revised at Dkt. No. 54-1).

7 4. Exhibit A to the State's Opposition is the Management Services Agreement
8 between Franciscan and The Doctors Clinic ("TDC"), produced by Defendants during the pre-
9 complaint investigation at CHI Franciscan-AG-000157. The redacted portions of this document
10 reflect the confidential terms of physician compensation, the competitively sensitive terms of
11 physician employment, confidential business strategy, and pricing strategy.

12 5. Exhibit B to the State's Opposition is TDC and Viewmont Properties' Quarterly
13 Meeting Agenda dated March 23, 2016, produced by Defendants during the pre-complaint
14 investigation at TDC000639. The redacted information in this document reflects TDC's
15 confidential business strategy.

16 6. Exhibit D to the State's Opposition consists of excerpts from the pre-complaint
17 investigation deposition transcript of Brian Chandler. The redacted information in this document
18 reflects TDC's confidential business strategy.

19 7. Exhibit E to the State's Opposition consists of excerpts from the pre-complaint
20 investigation deposition transcript of Randall Moeller. The redacted information in this document
21 reflects confidential business strategy and the competitively sensitive terms of physician
22 employment.

23 8. Exhibit H to the State's Opposition consists of TDC's Answers to Civil
24 Investigative Demand. The redacted information in this document reflects confidential payer
25 negotiation strategy and business strategy.

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1 9. Exhibit I to the State's Opposition consists of an email produced by Defendants
2 during the pre-complaint investigation at CHI Franciscan-AG-007933. This exhibit reflects
3 confidential pricing strategy.

4 10. The unredacted version of the State's Opposition contains summaries and excerpts
5 of confidential competitively sensitive information contained in Exhibits A, B, D, E, H, and I.

6 11. Exhibit A to the State's Motion consists of excerpts from the pre-complaint
7 investigation deposition transcript of Brian Chandler. The redacted information in this document
8 reflects the confidential terms of physician compensation, payer negotiation strategy, business
9 strategy, and pricing strategy.

10 12. Exhibit B to the State's Motion consists of excerpts from the pre-complaint
11 investigation deposition transcript of Randall Moeller. The redacted information in this document
12 reflects confidential business strategy and the competitively sensitive terms of employment.

13 13. Exhibit C to the State's Motion consists of excerpts from the pre-complaint
14 investigation deposition transcript of Dhyan Lal. The redacted information in this document
15 reflects Franciscan's confidential payer negotiation strategy and business strategy.

16 14. Exhibit D to the State's Motion consists of excerpts from the pre-complaint
17 investigation deposition transcript of Peter O'Connor. The redacted information in this document
18 reflects Franciscan's confidential business strategy and the competitively sensitive terms of
19 physician employment.

20 15. Exhibit E to the State's Motion consists of excerpts from the pre-complaint
21 investigation deposition transcript of David Schultz. The redacted information in this document
22 reflects competitively sensitive terms of employment.

23 16. Exhibit G to the State's Motion is TDC's Board of Directors meeting minutes dated
24 September 10, 2015, produced by Defendants during the pre-complaint investigation at
25 TDC0000594. This document contains information about TDC's confidential business strategy.

26 17. Exhibit H to the State's Motion is TDC and Viewmont Properties' Quarterly
27 Shareholder meeting minutes dated September 17, 2015, produced by Defendants during the pre-

1 complaint investigation at TDC000838. The redacted information in this document reflects
2 TDC's confidential business strategy.

3 18. Exhibit J to the State's Motion is TDC and Viewmont Properties' Quarterly
4 Shareholder Meeting agenda dated September 17, 2015, produced by Defendants during the pre-
5 complaint investigation at TDC000841. The redacted information in this document reflects
6 TDC's confidential business strategy.

7 19. Exhibit K to the State's Motion is TDC and Viewmont Properties' Annual
8 Shareholder Meeting minutes dated December 9, 2015, produced by Defendants during the pre-
9 complaint investigation at TDC000903. The redacted information in this document reflects
10 confidential business strategy

11 20. Exhibit M to the State's Motion is a joint TDC-Franciscan document discussing the
12 specific terms of physician compensation, produced by Defendants during the pre-complaint
13 investigation at CHI Franciscan-AG-007693. This document contains information about the
14 confidential terms of physician compensation and the competitively sensitive terms of
15 employment.

16 21. Exhibit N to the State's Motion is TDC's Board of Directors meeting minutes dated
17 March 17, 2016, produced by Defendants during the pre-complaint investigation at TDC000533.
18 The redacted information in this document reflects confidential business strategy.

19 22. Exhibit O to the State's Motion is TDC and Viewmont Properties' Quarterly
20 Meeting Agenda dated March 23, 2016, produced by Defendants during the pre-complaint
21 investigation at TDC000639. The redacted information in this document reflects confidential
22 business strategy.

23 23. Exhibit P to the State's Motion is the Professional Services Agreement between
24 Franciscan and TDC, produced by Defendants during the pre-complaint investigation at
25 TDC000121. The redacted information in this document reflects the confidential terms of
26 physician compensation, the competitively sensitive terms of employment, business strategy, and
27 pricing strategy.

1 24. Exhibit Q to the State's Motion is the Management Services Agreement between
2 Franciscan and TDC, produced by Defendants during the pre-complaint investigation at CHI
3 Franciscan-AG-000157. The redacted information in this document reflects the confidential terms
4 of physician compensation, the competitively sensitive terms of employment, and confidential
5 business strategy.

6 25. Exhibit T to the State's Motion is TDC's Board of Directors meeting minutes dated
7 October 19, 2016, produced by Defendants during the pre-complaint investigation at TDC000608.
8 The redacted information in this document reflects confidential business strategy, payer
9 negotiation strategy, and the competitively sensitive terms of physician employment.

10 26. Exhibit U to the State's Motion is TDC's Board of Directors meeting minutes dated
11 November 2, 2016, produced by Defendants during the pre-complaint investigation at
12 TDC000614. The redacted information in this document reflects confidential business strategy,
13 payer negotiation strategy, and the competitively sensitive terms of physician employment.

14 27. Exhibit V to the State's Motion is TDC's Board of Directors meeting minutes dated
15 November 16, 2016, produced by Defendants during the pre-complaint investigation at
16 TDC000620. The redacted information in this document reflects confidential business strategy
17 and the competitively sensitive terms of employment.

18 28. Exhibit W to the State's Motion is TDC's Board of Directors meeting minutes
19 dated December 7, 2016, produced by Defendants during the pre-complaint investigation at
20 TDC000625. The redacted information in this document reflects confidential business strategy,
21 the confidential terms of physician compensation, and the competitively sensitive terms of
22 physician employment.

23 29. Exhibit X to the State's Motion is TDC's Board of Directors meeting minutes dated
24 October 5, 2016, produced by Defendants during the pre-complaint investigation at TDC000603.
25 The redacted information in this document reflects confidential business strategy, the confidential
26 terms of physician compensation, and the competitively sensitive terms of employment.

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1 30. Exhibit Y to the State's Motion is Franciscan's Amended Response to Civil
2 Investigative Demand. The redacted information in this document reflects confidential payer
3 negotiation strategy.

4 31. Exhibit AA to the State's Motion is TDC's Answers to Civil Investigative Demand,
5 excerpted. The redacted information in this document reflects confidential payer negotiation
6 strategy and business strategy.

7 32. Exhibit BB to the State's Motion is TDC's Board of Directors meeting minutes
8 dated July 14, 2016, produced by Defendants during the pre-complaint investigation at
9 TDC000564. The redacted information in this document reflects confidential business strategy
10 and the competitively sensitive terms of physician employment.

11 33. Exhibit CC to the State's Motion is TDC's Board of Directors meeting minutes
12 dated July 21, 2016, produced by Defendants during the pre-complaint investigation at
13 TDC000569. The redacted information in this document reflects confidential business strategy
14 and the competitively sensitive terms of physician employment.

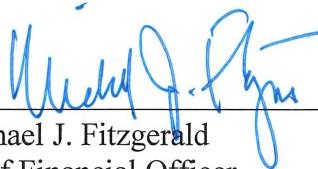
15 34. Exhibit DD to the State's Motion is TDC's Board of Directors meeting minutes
16 dated August 25, 2016, produced by Defendants during the pre-complaint investigation at
17 TDC000584. The redacted information in this document reflects confidential business strategy
18 and the competitively sensitive terms of physician employment.

19 35. The unredacted version of the State's Motion contains summaries and excerpts of
20 confidential competitively sensitive information contained in Exhibits A through E, G, H, J, K, M
21 through Q, T through Y, and AA through DD.

22 36. Disclosure of the confidential and competitively sensitive information described in
23 Paragraphs 4-35 would place Franciscan and the other Defendants at a competitive disadvantage.
24 Other healthcare providers who compete with the Defendants could use the information to obtain
25 an unfair advantage in competitive negotiations with payers, physicians, and physician practices.
26 Disclosure of the information would harm Defendants and competition generally.

1 I declare under penalty of perjury under the laws of the United States of America and the
2 State of Washington that the foregoing is true and correct.

3 Executed on this 7th day of December, 2017.

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6 Michael J. Fitzgerald
7 Chief Financial Officer,
Franciscan Health System

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following attorneys:

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Dated at Tacoma, Washington this 8th day of December 2017.

s/ Deidre M. Turnbull

Deidre M. Turnbull
Legal Assistant
Fain Anderson Van
Spillane, PLLC

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